

*** FILED ELECTRONICALLY ***

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(801)375-5600

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH**

IN RE:

Case No. 10-20934

KENNETH ALAN RALPHS AND CAMILLE
C RALPHS,

Chapter 7

DEBTOR(S).

RESPONSE TO MOTION FOR RELIEF FROM STAY

Comes now the Debtor, by and through counsel, and hereby submits the following response to the Motion for Relief from Stay from Green Tree Servicing LLC ("Creditor"):

1. Debtors do not oppose relief from the automatic stay with regard to the collateral, to the extent that the collateral exists or is recoverable.
2. Debtors oppose Creditor's request for attorney's fees, as Creditor, who is undersecured, has no legal basis for collecting them. This position is backed by the following case law:

This Court must determine whether an attorney violates Fed. R. Bankr. P. 9011 when the attorney seeks recovery of attorney's fees for the filing of a motion for relief from the automatic stay on an under secured claim. Because there is a complete absence of any authority supporting such an

award of attorney's fees -- and an abundance of authority providing that such an award cannot be made -- the Court determines that Rule 9011 sanctions are appropriate.

In re Nair, 320 B.R. 119, 121 (Bankr. S.D. Tex. 2004)

3. The collateral (a mobile home) was in possession of Debtors' son Ken Ralphs, Jr. ("Ken Jr.") since its purchase about nine years ago, who used it to rent to third parties. Debtors did not realize that Debtor Ken Ralphs' ("Ken Sr.") name was on the title to the mobile home; Debtors understood that Ken Sr. had merely co-signed. The title document did not come into his possession or come to his attention at any time.
4. It is Debtors' understanding that the third party renters in possession of the mobile caused serious damage to the collateral in 2009.
5. It is Debtors' understanding that Ken Jr., after obtaining oral approval from Creditor, discarded the collateral in late 2009 by placing the collateral in a construction dumpster.
6. Debtors did not participate in any of the discussions or decisions to destroy or discard the collateral, but learned about these facts after the fact, but before filing bankruptcy.
7. This response is filed one day late because of the following:
 - a. On 5/5/2010, Creditor's counsel stated to Debtors' counsel via e-mail that he would prepare an order not awarding attorney's fees, so that Debtor's counsel did not need to file a response. Debtor's counsel agreed via e-mail. *See* e-mail attached as Exhibit 1

- b. On 5/11/2010, Creditor's counsel suggested to Debtor's counsel via e-mail that Debtor's counsel file a response opposing attorney's fees because he was not comfortable waiving the attorney's fees. *See* e-mail attached as Exhibit 2.

Dated this 11 day of May, 2010.

SCRIBNER & McCANDLESS, P.C.

/s/ Jacob R. Powell

Jacob R. Powell

Attorney for Kenneth Alan Ralphs and Camille C Ralphs

EXHIBIT 1

From: jacob
To: Waite, Aaron M.
Date: 5/6/2010 6:48 PM
Subject: Re: In re Ralphs, Case 10-20934

That is my understanding as well, pending final discussions from my client. An order approved as to form would be fine; so would a stipulation plus an approved order. However, if I am approving the order as to form, which is tantamount to me consenting to default, it should explicitly state that the parties bear their own attorney's fees, so that the issue is not somehow left open.

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Fax (801)375-5607

>>> "Aaron M. Waite" <aaronwaite.esq@gmail.com> 5/5/2010 10:11 PM >>>
Jacob:

As you know, I represent Green Tree in this case. I understand that your clients do not oppose relief from the stay, only the additional attorneys' fees. How would you prefer to approach this? I can prepare an order for you to sign - approving it as to form. Will that be acceptable?

Thanks,

Aaron

Aaron M. Waite, Esq.

Senior Staff Attorney

Licensed in Utah, Nevada, and Arizona

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EXHIBIT 2

From: "Aaron M. Waite" <aaronwaite.esq@gmail.com>
To: "jacob" <jacob@ssmlegal.com>
Date: 5/11/2010 11:09 AM
Subject: RE: In re Ralphs, Case 10-20934

Jacob:

Please file a limited objection to the motion to address the attorneys' fees. I am not trying to create extra work for you or me here, but I am not comfortable with the approval that I have to waive the fees with regards to the motion for relief.

Thanks,
Aaron

-----Original Message-----

From: jacob [mailto:jacob@ssmlegal.com]
Sent: Thursday, May 06, 2010 6:48 PM
To: Aaron M. Waite
Subject: Re: In re Ralphs, Case 10-20934

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